

**BEFORE THE MONTANA LEGISLATURE
HOUSE NATURAL RESOURCES COMMITTEE**

**TESTIMONY OF THE
TONGUE RIVER WATER USERS' ASSOCIATION**

HOUSE BILL NO. 393

February 7, 2011

Dear Mr. Chairman and Members of the Committee:

Thank you for this opportunity to comment on House Bill 393.

With all due respect to Representative McChesney and those who believe that this bill will help people who may be harmed by coal bed methane development, we respectfully must oppose House Bill 393.

While HB 393 may be well intentioned, it is an assault on private property rights. It denies due process of law to ranchers who suffer harm to their property and water rights. It denies them a process to recover the fair market value of their property. Moreover, it may arguably allow a taking of private property. The state of Montana encourages CBM development and receives revenue from coalbed methane development, and yet would deny ranchers fair market value for their land and water that may be damaged by CBM development.

HB 393 is merely an incentive to allow CBM companies to reap profits and leave Montana taxpayers to shoulder the burden of damages they have created.

Like HB 121 that this Committee tabled earlier this session, this bill is an after-the-fact remedy and is too little, too late.

Mindful of the corporate tyranny our founding fathers had cast aside in fighting the American Revolutionary War, most opposed further expansion of corporate powers. Thomas Jefferson said, "I hope we shall crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our government in a trial of strength, and bid defiance to the laws of our country."

HB 393 asks the Legislature to do the bidding of a huge corporation. In the process, it would deny fair compensation for land and water for our ranchers who have shouldered the tax burden and kept Montana's economy alive for well over a century.

- The Montana Constitution, Article II, § 29 provides: Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made or paid into court for the owner . . .
- The Fifth Amendment's Takings Clause reads: "nor shall private property be taken for

public use without just compensation."

- 42 U.S.C. § 1983, provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ."
- There is a farm listed on the T&Y for \$5000 dollar per acre with a new house. While that may be high, any irrigated land for sale at \$3000 an acre is gone fast.
- There is 8.1 million dollars in the fund, but apparently there is a proposal to take \$5 to \$6 million to balance the state budget.
- The Conservations Districts would only get \$300,000 a year for claims. That wouldn't even cover two claims.

The Tongue River Water Users' Association respectfully urges a DO NOT PASS on this bill.

Sincerely,

Brenda Lindlief Hall
Attorney for
Tongue River Water Users' Association